

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-7114

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P/S

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 75-7114

STEPHANIE CRAWFORD,

Appellant,

v.

GENERAL ROBERT E. CUSHMAN, JR.
COMMANDANT,
UNITED STATES MARINE CORPS,

Appellee.

JOINT APPENDIX

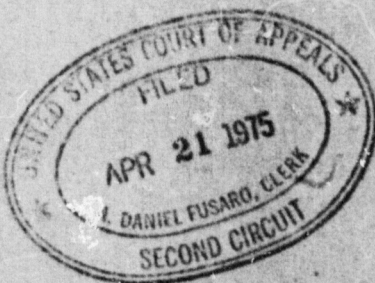
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RELEVANT DOCKET ENTRIES

<u>Date</u>	<u>Filings</u>
3-3-71	Filed Complaint-- Summons Issued.
4-19-71	Filed Defendant's Motion to Dismiss for Lack of Jurisdiction.
5-27-72	Filed Defendant's Motion for Summary Judgment.
7-6-72	Filed Order of Court Denying Motion to Dismiss and Motion for Summary Judgment.
9-25-72	Filed Defendant's Answer.
10-30-72	Filed Respondent's Renewed Motion for Summary Judgment.
3-26-73	Filed Order of Court Denying Respondent's Renewed Motion for Summary Judgment.
6-6-73	Filed Order of Dismissal.
11-26-73	Filed Order Vacating Order of Dismissal Entered June 6, 1973.

3-25-74	Filed Petitioner's Motion to Amend Complaint.
7-12-74	Filed Findings of Fact and Conclusions of Law; Complaint Dismissed and Judgment Entered for the Defendant.
7-22-74	Filed Petitioner's Motion for New Trial.
10-15-74	Filed Petitioner's Amended Motion for New Trial and for Other Relief.
10-31-74	Filed Order Denying Motion for New Trial and for Other Relief.
12-30-74	Filed Notice of Appeal.
1-10-75	Filed Motion for Leave to Proceed in Forma Pauperis and Accompanying Affidavit.
3-20-75	Filed Order Granting Motion to Proceed in Forma Pauperis.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

STEPHANIE CRAWFORD,

Plaintiff

vs.

GENERAL LEONARD F.
CHAPMAN, JR., Commandant
United States Marine
Corps,

Defendant

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Civil No. _____

COMPLAINT

I. Statement

This is an action for a declaratory judgment and a writ in the nature of mandamus ordering the defendant to reinstate plaintiff in the Women's Marine Corps; on grounds that her discharge therefrom, and the denial of her right to reenlist therein on grounds that she has a child, denies her due process of law and equal protection of the laws guaranteed by the fifth amendment to the United States Constitution.

II. Jurisdiction

1. This court has jurisdiction of this complaint under 28 U.S.C. section 1361.

III. Parties

2. The plaintiff, Stephanie Crawford, is a resident of Essex Junction, Vermont.

3. The defendant, Leonard F. Chapman, Jr., is Commandant of the United States Marine Corps.

IV. Claim

4. Plaintiff first enlisted in the Women's Marine Corps on February 5, 1968.

5. During the time of her service in the Women's Marine Corps, plaintiff was stationed at the Marine Air Station in El Toro, California and served as a receptionist, secretary, keypunch operator, and clerk. Plaintiff's service number was W720919.

6. On May 27, 1970, plaintiff was given a general discharge under honorable conditions from the Marine Corps.

7. Said discharge was involuntary and was against plaintiff's will.

8. The sole reason stated for said discharge was "convenience of Government due to pregnancy."

9. Plaintiff came to Vermont on August 25, 1970, and has resided within the State of Vermont from that time to the present.

10. On December 13, 1970, plaintiff gave birth to a daughter. Plaintiff was not married at the time of conception or birth and is not now married. Plaintiff has kept the child and plans to raise her herself.

11. Plaintiff contacted the Marine Corps Recruiting Station in Burlington, Vermont in November, 1970, to determine whether she could reenlist in the Marine Corps after the birth of her child. She was told that she could not do so.

12. Plaintiff believes she is perfectly able to perform all the duties she previously performed in the Marine Corps despite the fact that she has a child.

13. Plaintiff has good information and belief that the basis for her inability to reenlist in the Marine Corps is the Military Personnel Procurement Manual, Marine Corps Order P1100.61B ¶ 2209.

14. Plaintiff has good information and belief that the basis for her discharge from the Marine Corps was Executive Order No. 10240 (Apr. 27, 1951), issued pursuant to 10 U.S.C. section 3818.

15. The regulations cited in paragraphs 12 and 13 above deny plaintiff due process of law and equal protection of the laws under the fifth amendment to the United States Constitution, in that male Marines are permitted to remain in the Marine Corps with dependents, and the distinction drawn in the regulation between men and women is arbitrary and capricious.

V. Prayer for Relief

16. Plaintiff therefore requests that the court order the defendant to reinstate plaintiff in the Marine Corps with restoration of the benefits and emoluments she would have received had she not been arbitrarily and capriciously discharged from service.

Dated at Burlington, Vermont this 23d day of

February, 1971.

STEPHANIE CRAWFORD
BY VERMONT LEGAL AID, INC.

J. Morris Clark
J. MORRIS CLARK
Of Counsel

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

Stephanie Crawford

v.

General Leonard F. Chapman, Jr.,
Commandant, United States
Marine Corps

Civil Action

File No. 6216

ORDER

*Edward J. Giddell
Clerk*

This is an action for a declaratory judgment and a writ in the nature of mandamus directing the respondent, the commandant of the United States Marine Corps, to reinstate the petitioner as a member of that branch of the Armed Services. The Government responded with a motion to dismiss, which it followed with a motion for summary judgment. By agreement of the parties, both motions were heard at one time, written memoranda filed and submitted to the court for decision on May 16, 1972.

MOTION TO DISMISS

The motion to dismiss is asserted on two grounds: first, that the complaint fails to state a claim for relief under 28 U.S.C. § 1361; secondly, that the plaintiff has not exhausted her administrative remedies since she failed to seek redress by application to the Naval Board for the Correction of Records.

The complaint alleges that plaintiff first enlisted in the United States Marine Corps on February 5, 1968. During her time of service she was stationed at the Marine Air

Station in El Toro, California, where she served as a receptionist, secretary, key punch operator and clerk.

On March 27, 1970 she was given a general discharge under honorable conditions "for the convenience of the Government due to pregnancy." On December 13, 1970, the plaintiff gave birth to a daughter. She was not married at the time of conception nor at the time of the birth of this child. The plaintiff has the child in her custody and plans to raise her herself.

The plaintiff alleges that her discharge was accomplished pursuant to Marine Corps regulations and that the execution of these regulations has denied her due process and equal protection of the law in violation of the Fifth Amendment to the United States Constitution in that male Marines are permitted to remain in the Corps with dependents. She contends the distinction drawn in the regulation is arbitrary and capricious.

Whether the plaintiff has a right to the relief sought in her complaint and whether the defendant has a duty to perform the acts requested of him cannot be decided on the facts alleged. And resort to the Board for the Correction of Naval Records is not an administrative remedy which must be exhausted before jurisdiction in this court can be invoked. United States ex rel Joy v. Resor (Civ. Actn. 6281 D. Vt., May 9, 1972). Patterson v. Stancliff, 330 F. Supp. 110, 112. (D. Vt. 1971).

MOTION FOR SUMMARY JUDGMENT

The petitioner's discharge was accomplished according to MCO P 1900.16 par. 6012(1)(c). Its pertinent provisions at the time of her discharge provided:

A woman member, whether married or unmarried, upon certification by a medical officer that she is pregnant, shall be discharged by her commander, for the convenience of the Government, If, as a result of a spontaneous or therapeutic abortion, or a stillbirth, the woman member's (sic) pregnancy is terminated prior to her separation from the service, she will nevertheless be discharged for the convenience of the service. In such latter case, the woman member, at the discretion of her commander, may be retained in the service, if she is found physically qualified for retention.

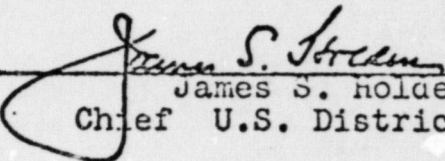
Petitioner alleges that this regulation denies her equal protection of the law in distinguishing between her and other Marines, both male and female, who become physically incapacitated while in the service. She also alleges that her mandatory discharge, because of pregnancy, denies her due process of the law. It is her contention that her rights involved are "fundamental" ones requiring the Government to show a "compelling" interest in the classifications made.

Federal Rule of Civil Procedure 56(c) requires that summary judgment be rendered if "there is no genuine issue as to any material fact" In this case the pleadings raise genuine issues of fact as to the nature of the rights involved, the nature of the classification, the nature of the Government's interest and the relationship between each of them. Where constitutional rights are or may be involved, a court should proceed only on a full record and summary judgment should be granted only when submitted on a solid basis of fact, as by affidavit or stipulation, or where the issues are "clear cut and simple." Phillips v. Martin Marrietta, 400 U.S. 542, 544 (1971). Kennedy v. Silas Mason Co., 334 U.S. 249, 256 (1948).

It is therefore ORDERED:

Respondent's motion to dismiss and motion for summary judgment are denied. Cause will be set down for hearing by the court.

Done at Rutland, in the District of Vermont, this 5th day of July, 1972.


James S. Holden
Chief U.S. District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

STEPHANIE CRAWFORD,

Plaintiff,

vs.

Civil No. _____

GENERAL LEONARD F. CHAPMAN, JR.,
COMMANDANT UNITED STATES MARINE
CORPS,

Defendant.

INTERROGATORIES

PLAINTIFF'S INTERROGATORIES ADDRESSED TO DEFENDANT

Plaintiff, by her attorneys, hereby requests that the defendant in the above-captioned action separately answer under oath in accordance with Rule 33 of the Federal Rules of Civil Procedure the following interrogatories.

I. Definitions

A. As used herein, the words "document" or "documents" include any written, printed, typed or graphic matter of any kind or nature however produced or reproduced, and all mechanical and electric sound recordings or transcripts thereof, however produced or reproduced, now in the possession, custody or control of officers, agents, representatives, employees of the United States Marine Corps, or any and all persons acting in its behalf, including documents at any time in the possession, custody, or control of such individuals or known by the defendant to exist.

B. As used herein, the words "identity," "identify" or "identification" when used in reference to a natural person mean to state his or her full name and present or last known address, his or her present or last known position and business affiliation, and each of his or her positions during the relevant time periods as defined below; when used in reference to a document kept or prepared in the course of business mean to

state its date, its author, the type of document (e.g. letter, etc.) or, if the above information is not available, some other means of identifying it, and its present location and the name of each of its present custodians. If any such document was but is no longer in the possession of the United States Marine Corps or subject to its control, or in existence, state whether it is (a) missing or lost, (b) has been destroyed, (c) has been transferred voluntarily or involuntarily to others, or (d) otherwise disposed of, and in each instance, explain the circumstances surrounding and authorization for such disposition thereof and state the date or approximate date thereof.

C. As used herein, the term "regulation" shall mean each rule, procedure or directive issued by or on behalf of the United States Marine Corps which purports to regulate enlistment, reenlistment or in service treatment of members of the United States Marine Corps.

D. As used herein, the term "policy" shall mean each rule, procedure, or directive, formal or informal, oral or written, and each common understanding or course of conduct which was recognized as such by you, by present and former officers, agents, employees or other persons acting or purporting to act on behalf of the United States Marine Corps, which was in effect at any time during the relevant time periods and which includes any change of policy.

E. As used herein the words "person" or "persons" include natural persons, firms, partnerships, associations, joint ventures, and corporations.

F. As used herein, the term "studies" includes all reports, analyses, memoranda, statistical compilations, reviews and other types of written or printed submissions of information.

G. Unless otherwise specified, the "relevant time periods" shall be taken to mean:

- 1) February 5 through May 27, 1970;
- 2) May 28, 1970 through November 31, 1970;
- 3) December 1, 1970 through the date on which the answers to these interrogatories are prepared.

H. Each interrogatory is to be answered separately.

I. These interrogatories shall be deemed continuing so as to require additional answers if further information is obtained between the time the answers are served and the time of trial. Such additional answers shall be served from time to time, but no later than thirty (30) days after such additional information is received.

II. INTERROGATORIES ADDRESSED TO DEFENDANT.

1. For each of the relevant time periods, provide the following:

a) Identify and briefly describe all regulations of the United States Marine Corps relating to pregnancy and/or parenthood as a disqualification for

- i) enlistment;
- ii) continued service;
- iii) reenlistment.

b) Identify and briefly describe all policies of the United States Marine Corps not contained in a regulation identified in (a) above, relating to pregnancy and/or parenthood as a disqualification for

- i) enlistment;
- ii) continued service;
- iii) reenlistment.

c) Identify person or persons responsible for the formulation and/or execution of all regulations and/or policies identified in (a) and (b) above.

d) Identify and briefly describe all reports, communications, studies or documents which record, refer or relate to the information contained in your answers to (a) through (c) above.

e) Set forth the reasons for any changes made during the relevant time periods with respect to the information contained in your answers to (a) through (c) above. Identify and briefly describe all reports, communications, studies or documents which record, relate, or refer to such changes.

2. With respect to any regulation identified in your answers to Interrogatory No. 1 which prescribes discharge for pregnancy, provide the following:

a) State whether and when such regulation was amended to provide for waiver;

b) State number of waiver requests submitted and number of waiver requests granted prior to such amendment;

c) State number of waiver requests submitted and number of waiver requests granted since such amendment;

d) Set forth criteria used in determining whether to grant or deny a waiver;

e) Identify and briefly describe all reports, communications, studies or documents which record, refer or relate to the information contained in your answers to (a) through (d) above.

3. Identify and briefly describe all regulations of the United States Marine Corps which relate to the rehabilitation and retention in service of

a) persons who overindulge in alcohol;

b) persons who are addicted to drugs, or are frequent drug users.

4. For each of the relevant time periods state whether the following class of persons were/are disqualified for

- i) enlistment;
- ii) continued service;
- iii) reenlistment

if they engage in the following activities:

a) Whether females are disqualified if they engage in sexual intercourse;

b) Whether males are disqualified if they engage in sexual intercourse;

c) Whether females are disqualified if they become pregnant;

d) Whether males are disqualified if they impregnate a woman;

e) Whether females are disqualified if they bear a child

- i) in wedlock
- ii) out of wedlock;

f) Whether males are disqualified if they beget a child

- i) in wedlock
- ii) out of wedlock;

g) Whether females are disqualified if they adopt a child

- i) when single
- ii) when married;

h) Whether males are disqualified if they adopt a child

- i) when single
- ii) when married;

i) Identify and briefly describe all reports, communications, studies or documents which record, refer to, or relate to the information contained in your answers to (a) through (h) above;

j) Set forth the reasons for any changes made during the relevant time periods with respect to the information contained in your answers to (a) through (h) above. Identify and briefly describe all reports, communications, studies or documents which record, refer or relate to such changes.

5. State what medical findings, if any, were made concerning plaintiff Stephanie Crawford's individual capacity to continue on active duty during and after pregnancy, prior to the time plaintiff was ordered discharged. Identify and briefly describe all reports, communications, studies or documents which record, refer or relate to such findings.

6. With respect to such temporary physical disabilities as

- i) broken leg occasioned by an accident in the course of recreational activity;
- ii) hernia operation

provide the following:

a) Whether such temporary disabilities are grounds for involuntary discharge;

b) What provisions, if any, are made for transfer to a new duty station when adequate medical care facilities are unavailable;

c) What provisions, if any, are made for replacement of temporarily disabled person during absence from duty;

d) What provisions, if any, are made to prevent the impairment of accomplishment of the disabled person's unit mission until a suitable replacement can be found and trained;

e) What provisions, if any, are made to transfer temporarily disabled persons to a new duty station if his or her billet has been filled by another person;

f) What provisions, if any, are made to avoid difficulties in assignment of duties if the temporarily disabled person refuses to take leave.

g) Identify and briefly describe all reports, communications, studies or documents which record, refer or relate to the information contained in your answers (a) through (f) above.

7. With respect to male members of the United States Marine Corps who are parents of children under the age of eighteen years, provide the following:

a) number of males with dependents;

b) percentage of males with dependents in relation to total number of male members of United States Marine Corps;

c) provisions made for prenatal care of wives of male members of Marine Corps;

d) provisions made for postnatal care of wives of male members of Marine Corps;

e) provisions made for housing of children of male members of Marine corps;

f) provisions made to provide for care of children of male members of Marine Corps when such members are

i) reassigned

ii) subject to temporary additional duty away from permanent duty station;

g) whether any day-care facilities are provided at any Marine Corps installations;

h) whether individual male parents are required to report to the Marine Corps arrangements made for the care of their children;

i) Identify and briefly describe all reports, communications, studies or documents which record, refer or relate to the information contained in your answers to (a) through (h) above.

8. With respect to the decision to grant a "general discharge under honorable conditions," provide the following:

a) Identify the authorization to grant a general discharge;

b) Identify persons or person responsible for making the decision whether discharge is to be general or honorable;

c) Set forth criteria used in determining whether discharge will be general or honorable;

d) Give number of general discharges for pregnancy for each relevant time period;

e) Give number of honorable discharges for pregnancy for each relevant time period;

f) State whether male members of the United States Marine Corps are subject to disciplinary action if they date a married woman (other than their wives);

g) Identify and briefly describe all reports, communications, studies or documents which record, refer or relate to the information contained in your answers to (a) through (f) above.

9. With respect to the plaintiff Stephanie Crawford, provide the following:

a) Identify person or persons responsible for determining that the plaintiff would be given a general discharge;

b) Set forth the reasons why plaintiff was given a general discharge;

c) Identify and briefly describe all reports, communications, studies or documents which record, refer, or relate to the information contained in your answers to (a) and (b) above.

JAR:AAR:jlp

FEB 5 1974

Ms. Mary Just Skinner
Vermont Legal Aid, Inc.
Box 658
Montpelier, Vermont 05602

Re: Crawford v. Cushman
No. 6216 (D. Vt.)

Dear Ms. Skinner:

In response to your interrogatories filed March 12, 1973 in the captioned case, as modified by Judge Holden in chambers on January 18, 1974, the following information is provided. Except as otherwise indicated, copies of all regulations referred to are enclosed herein.

It is my understanding that all objections noted below were sustained by Judge Holden on January 18.

1.a(1). The following regulations relating to enlistment and reenlistment as affected by pregnancy and/or parenthood were in effect during the time periods specified:

MCO (Marine Corps Order) P1100.61A, para. 2209 prior to 4 September 1970; MCO P1100.61B, para. 2209 from 4 September 1970 to 1 June 1972; MCO P1100.61C, para. 2209 from 2 June 1972, as modified by change 1 of 19 December 1972.

1.a(2). The following regulations governing continued service (i.e., discharge/retention) as affected by pregnancy and/or parenthood were in effect:

MCO P1900.16, para. 6012, as modified by change 2 of 21 November 1969, prior to 16 November 1970; as modified by change 7 from 16 November 1970 to 26 March 1971; MCBul (Marine Corps Bulletin) 1900 of 26 March 1971, to 27 June 1972; MCO P1900.16A, para. 6012 from 28 June 1972.

1.b. All policy on the referenced topics was promulgated as regulation.

1.c. The Commandant of the Marine Corps.

1.d and 1.e. To the extent not covered by the affidavit of Lieutenant General Ormond Simpson, U. S. Marine Corps, of 24 October 1972 (hereinafter "Simpson affidavit"), these matters are regarded as irrelevant and/or privileged.

2.a. Yes, 26 March 1971.

2.b. This information is regarded as irrelevant.

2.c. There have been to date 10 requests for maternity leave, with eventual return to active duty; of these, 5 have been approved and 3 disapproved, one withdrawn (voluntary resignation) and one is pending final decision. In addition, there have been requests from 15 women that they be allowed to remain on active duty for periods ranging from one to seven months beyond confirmation of pregnancy, with voluntary discharge at some point prior to confinement. Of these, 14 have been approved, and one is pending decision. One waiver was granted for a woman Marine to remain on active duty after adopting a stepchild, and one woman Marine was granted permission to remain on active duty after becoming legal guardian of her teen-age sister.

2.d. See paragraph 5 of Simpson affidavit.

2.e. These matters are regarded as irrelevant and/or privileged.

3.a. Marine Corps Order 5370.6 (rehabilitation); MCO P1900.16A, para. 6012.1f(4)(b), para. 6016.1f et seq. (retention).

3.b. Marine Corps Order 6710.1A (rehabilitation) (not presently available); MCO P1900.16A, para. 6012.2, para. 6017 (retention).

4.a. No.

4.b. No.

4.c. See answer to 1a.

4.d. No.

4.e. See answer to 1a.

4.f. As to enlistment/reenlistment, see MCO P1100.61B. para. 2109 (prior to 2 June 1972); MCO P1100.61C (2 June 1972 to 18 December 1972); MCO P1100.61C change 1, effective 19 December 1972 to present. As to continued service, no.

4.g. See answer to 1a.

4.h. See answer to 4.f.

4.i. These matters are regarded as irrelevant and/or privileged.

4.j. To the extent not answered by the Simpson affidavit, these matters are regarded as irrelevant and/or privileged.

5. The health records necessary to answer this question are now in the custody of the Veterans Administration. See my letter to you of 24 January 1974.

In the interests of time, and pursuant to your request in our telephone conversation of yesterday, I am transmitting this information as it becomes available. I am continuing to gather information and will send it to you as available, but prior to February 15, the date I understand to be Judge Holden's deadline.

Sincerely,

Allan A. Ryan, Jr.
Captain USMC

cc: United States Attorney

JAR:AAR:jlp

FEB 12 1974

Ms. Mary Just Skinner
Vermont Legal Aid, Inc.
52 State Street
Montpelier, Vermont 05602

Dear Ms. Skinner:

The following information is provided in further response to your interrogatories. My previous letters of January 24 and February 5 also contained such information. All Marine Corps orders referenced below are included herewith or have been previously sent to you. MCO 6710.1B, which was listed in its earlier version (6710.1A, now obsolete) as being "not presently available" in my letter of 5 February 1974, is also enclosed.

6.a. The principles governing separation for physical disability are set forth in Title 10, U. S. Code, sections 1201 et. seq. and implemented within the Marine Corps by paragraph 6011 and Chapter 10, Marine Corps Order 1900.16A (Marine Corps Separation and Retirement Manual). Whether separation or retirement for physical disability is appropriate in any individual case depends on whether the service member meets the conditions set forth in statute and regulation. It may be appropriate to note that discharges based on pregnancy are not within paragraph 6011, but rather are governed by paragraph 6012 of the Separation and Retirement Manual, a copy of which has previously been supplied to you.

6.b. A Marine who is injured or diseased is given adequate medical care. If facilities for such care are unavailable at his present location, he is transferred to a location where they are available.

6.c. Service members temporarily lost to their command because of physical disability may or may not be replaced while absent from duty. The decision would depend on many factors, including but not limited to: i) the anticipated length of the absence, ii) the degree to which the job performed is critical, iii) the availability of qualified replacements, iv) the extent to which the absent member's responsibilities can be temporarily absorbed by others within the command.

6.d. If it is considered necessary to locate and train a replacement, the command is expected to take appropriate action to ensure that the unit's ability to accomplish its mission is not impaired. The action appropriate will depend on the circumstances of the individual unit.

6.e. A temporarily disabled person whose billet had been filled by another person would be transferred to a new duty station if there were no suitable billets available at the former command. Whether such billets are available would depend on the projected attrition at the former command (future needs), distance from the place where the individual is hospitalized and dependents' location.

6.f. A temporarily disabled person is placed in a "no-duty" status if warranted by his or her medical condition. Time spent in this status is not chargeable as annual leave.

6.g. This information is regarded as irrelevant and/or privileged.

7.a. As of December 31, 1973, there were 18,794 officers and 170,598 enlisted personnel on active duty. These figures include both men and women. Of these, 14,320, or 76.2%, of the officers and 64,560, or 37.8%, of the enlisted personnel indicated that they had dependents. These dependents include spouses, children, and/or parents. The data break-out beyond this is not available. A computer program for this data can be written and run, but current workload and scheduling problems indicate approximately a 30-day waiting period.

7.b. See 7.a.

7.c. Prenatal and postnatal care is provided to wives of male Marines as one aspect of medical care and services provided to military dependents. If the wife lives with her husband on or near a Marine Corps base or other duty station in the United States, prenatal and postnatal care is generally available at the nearest U. S. Naval Hospital. (The U. S. Navy provides, where available, all medical services and facilities utilized by Marines). If the husband is on an unaccompanied tour of duty overseas, the wife lives where she chooses in the United States and is eligible for prenatal/postnatal care at U. S. Naval Hospital facilities, or other military hospital facilities, or civilian hospitals.

7.d. See 7.c.

7.e. With certain exceptions, all active duty Marines may be required to live on base if suitable quarters are available for the family. See Title 37, U. S. Code, Section 403. If such quarters are not available, Marine officers and enlisted personnel are normally allowed to seek housing in the local community, and are paid a housing allowance. The amount of this allowance depends on rank and whether the Marine has dependents. However, Title 37, U. S. Code, Section 403, which sets forth the amount of such allowances, provides "A member in pay grade E-4 (less than four years' service), E-3 E-2 or E-1 is considered at all times to be without dependents."

7.f. No provisions are made by the Marine Corps for care of children when Marines are reassigned or subject to temporary additional duty away from permanent duty stations. Such provisions are the responsibility of individual Marines.

7.g. Day care facilities are provided at the following Marine Corps activities:

- a. Marine Corps Supply Center, Albany, Georgia
- b. Marine Corps Supply Center, Barstow, California
- c. Marine Corps Base, Camp Lejeune, North Carolina
- d. Marine Corps Base, Camp Pendleton, California
- e. Marine Corps Base, Twentynine Palms, California
- f. Marine Corps Air Station, Kaneohe Bay, Hawaii
- g. Marine Corps Air Station, Cherry Point, North Carolina
- h. Marine Corps Air Station, New River, North Carolina
- i. Marine Corps Air Station, Beaufort, South Carolina
- j. Marine Corps Air Station, El Toro, Santa Ana, California
- k. Marine Corps Air Station (H), Santa Ana, California
- l. Marine Corps Air Station, Yuma, Arizona
- m. Marine Corps Recruit Depot, Parris Island, South Carolina
- n. Marine Corps Recruit Depot, San Diego, California
- o. Marine Corps Development and Education Command, Quantico, Virginia
- p. Marine Corps Air Station, Iwakuni, Japan

7.h. No.

7.i. This information is regarded as privileged and/or irrelevant.

8.a. 32 C.F.R. § 41.1 et. seq.; Marine Corps Order P1900.16A, para. 6004.

8.b. The Commandant of the Marine Corps has set forth standards for determining whether a discharge shall be honorable or general. These standards are embodied in paragraphs 6003 and 6004 of MCO P1900.16A. Application of these standards in individual cases is the responsibility of the discharge authority.

8.c. See 8.b.

8.d. The following data is available concerning discharges for pregnancy/parenthood during the time periods shown:

Fiscal Year 1970 (1 Jul 69 - 30 Jun 70):	575
Fiscal Year 1971 (1 Jul 70 - 30 Jun 71):	404
Jul 71:	27
Aug 71:	25
Sep 71:	31
Oct 71:	28
Nov 71:	17
Dec 71:	31
Jan 72:	44
Feb 72:	23
Mar 72:	32
Apr 72:	24
May 72:	39
Jun 72:	26
Total Fiscal Year 1972 (1 Jul 71 - 30 Jun 72):	347
Jul 72:	49
Aug 72:	34
Sep 72:	45
Oct 72:	30
Nov 72:	37
Dec 72:	26
Jan 73:	28
Feb 73:	20
Mar 73:	47
Apr 73:	13
May 73:	30
Jun 73:	16
Total Fiscal Year 1973 (1 Jul 72 - 30 Jun 73):	381
Jul 73:	20
Aug 73:	14
Sep 73:	27
Oct 73:	25
Nov 73:	22
Dec 73:	18
Total, 1 Jul 73 - 31 Dec 73:	126

Note: a. Monthly figures unavailable prior to July 1971.

- b. Fiscal Year figures include four officers; Fiscal Year 1974 figures (through 31 Dec 73) include three officers; earlier Fiscal Year figures do not reflect officer discharges, if any.
- c. Data available does not distinguish between honorable and general discharges.
- d. December 1973 is last month for which figures are available.

8.e. See 8.d, note c.

8.f. There is no categorical answer to whether a Marine - male or female - is subject to disciplinary action for dating a married person other than his or her spouse. If such conduct, under all the facts and circumstances, is of such a nature to "bring discredit upon the armed forces" within the meaning of Article 134, Uniform Code of Military Justice, disciplinary action may be warranted. Such action could include nonjudicial punishment under Article 15, Uniform Code of Military Justice, or referral to a summary, special or general court-martial as determined by the convening authority.

8.g. This information is regarded as irrelevant and/or privileged.

9.a. W. F. Gross, CWO-2, U. S. Marine Corps, Administrative Officer, Reassignment Branch, Marine Corps Air Station, El Toro, Santa Ana, California.

9.b. Plaintiff Stephanie Crawford's final average duty proficiency mark was 3.9 and her final average conduct mark was 4.2. The duty proficiency mark was below the minimum required for an honorable discharge by paragraph 6003. See answer to 8.b.

9.c. This information is regarded as irrelevant and/or privileged.

In further answer to question 1.a of the referenced interrogatories, the following is provided: "See also Executive Order 10240 of April 27, 1951."

Sincerely,

Allan A. Ryan, Jr.
Captain USMC

cc: United States Attorney
Rutland, Vermont

JAR:AAR:jmb

FEB 26 1974

Ms. Mary Just Skinner
Vermont Legal Aid, Inc.
Box 658
Montpelier, Vermont 05602

Dear Ms. Skinner:

As I informed you via telephone on February 22, the breakdown on honorable and general discharges granted for pregnancy/parenthood for recent years is as follows:

<u>Fiscal Year</u>	<u>No. Honorable Discharges</u>	<u>No. General Discharges</u>
1969	601	33
1970	397	18
1971	198	23
1972	318	16
1973	289	7
1974 (through 31 Dec 73)	<u>114</u>	<u>3</u>
TOTAL	1917	100

As explained in paragraph 6004, Separation and Retirement Manual, (a copy of which was sent to you with my letter of February 12, 1974) a general discharge "is a separation from the service under honorable conditions."

Sincerely,

ALLAN A. RYAN, Jr.
Captain USMC

cc:
United States Attorney
Rutland, Vermont 05701

FEB 18 1974

Ms. Mary Just Skinner
Vermont Legal Aid, Inc.
52 State Street
Montpelier, Vermont 05602

Re: Crawford v. Cushman
(D. Vt., No. 5210)

Dear Ms. Skinner:

My letter to you of February 12, 1974 contains a significant typographical error. Answer 9.b on page 5 should read as follows:

"Plaintiff Stephanie Crawford's final average duty proficiency mark was 4.2 and her final average conduct mark was 3.9. The average conduct mark was below the minimum required for an honorable discharge by paragraph 6003. See answer to 8.b."

I enclose a copy of Ms. Crawford's NAVMC 118(3) which will verify the final average marks. I regret any inconvenience which this error may have caused.

In our telephone conversation of this date, you requested a breakdown of the data contained in the answer to question 8.d and 8.e so as to distinguish between honorable and general discharges. I have been told by our data systems personnel that such a program can probably be run by February 22. I will so request and forward this information to you.

You also requested a breakdown of data to distinguish between discharges for pregnancy and discharges for parenthood. The separation code number entered in each discharged individual's files is the same for both pregnancy and parenthood. Consequently, the information you request does not exist.

Sincerely,

ALLAN A. RYAN, JR.
Captain USMC

cc: U. S. Attorney
Rutland, Vermont 05701

contract. After the plaintiff reported for basic training at boot camp she learned that, under prevailing existing regulations, pregnancy would result in an "automatic discharge" from the Marine Corps.

After basic training the plaintiff received instruction in service schools, which included secretarial and data processing training. She was eventually assigned to the Marine Corps Air Station, El Toro, California. Her duty assignment was office work. At this station she resided in open barracks where approximately one hundred fifty female Marines were quartered.

In the course of her enlisted service the plaintiff was hospitalized for various physical and psychological causes. In January 1970 the plaintiff suffered from a stomach ulcer, a virus infection and irregular menstrual periods. During the period from mid-March to the middle of May 1970 the plaintiff reported to the base infirmary on approximately eighteen occasions, complaining of persistent nausea, fainting and blackout spells, abdominal pain and fatigue. On April 20, 1970 the plaintiff was transferred, at her request, to a change in duty assignment because of "emotional pressure." In May 1970, preparatory to minor surgery, it was medically determined that the plaintiff had conceived a child in the preceding March, at or about the time she discontinued contraceptive medication. On May 27, 1970 the plaintiff was discharged "for the convenience of the Government - under honorable conditions." The date of discharge occurred approximately twenty months before the expiration of the term of her enlistment contract.

In discharging the plaintiff, the Commandant of the Marine Corps acted pursuant to rules and regulations of that branch of the service relating to pregnancy and parenthood. On May 27, 1970

the pertinent provisions (MCD P1900.16 ¶ 6012, as modified by change 2 of 21 November 1969) provided:

Discharge or Release from Active Duty for Convenience of the Government

1. The Secretary of the Navy, or the Commandant of the Marine Corps, may authorize or direct the discharge or release from active duty of a Marine for the convenience of the Government for any one of the following reasons:

* * * *

A woman member, whether married or unmarried, upon certification by a medical officer that she is pregnant, shall be discharged by her commander, for the convenience of the Government, or in the case of overseas commands, will be transferred to a major Marine Corps command housing Women Marines in the continental United States for discharge. The character of the discharge certificate issued in these cases will be as warranted by the woman member's service record, regardless of her marital status. In the case of discharge for reason of the pregnancy of a woman member who is an unmarried minor (under 21 years), her commander will notify her parents or guardian of the fact and reason for the discharge. If, as a result of a spontaneous or therapeutic abortion, or a stillbirth, the woman member's pregnancy is terminated prior to her separation from the service, she will nevertheless be discharged for convenience of the Government unless she requests, in writing, that she be retained in the service. In such latter case, the woman member, at the discretion of her commander, may be retained in the service, if she is found physically qualified for retention. 1/

Following her discharge, the plaintiff remained in California until the following August. The plaintiff had been previously informed that she would be afforded free medical care during her pregnancy. During her stay in California the plaintiff consulted a naval medical officer at least once. In August 1970 she removed to Burlington, Vermont, preparatory to entering the Elizabeth Lund Home.^{2/} At Burlington the plaintiff received medical consultation, care and treatment afforded by obstetricians on the staff of the Medical Center Hospital of Vermont. During the prenatal period the plaintiff was confined to her bed as a result of the aggravation, by pregnancy, of a prior back injury.

During the seventh month of pregnancy the plaintiff sustained an ankle injury as a result of a fall.

On December 13, 1970 the plaintiff gave birth to a baby girl. The plaintiff's medical records indicate nothing to medically prevent her from carrying on her assigned military occupation as late as her seventh month of pregnancy. Her child, at birth, was full term, normal and healthy. The plaintiff made a good recovery and was able to work six weeks after her hospitalization. The disability caused to the plaintiff, by reason of her pregnancy, was temporary.

The only medical evidence at the trial was presented by the obstetrician who attended the plaintiff during her confinement at Burlington. He testified that there is no physiological reason to prevent women from working during the early stages of pregnancy, absent complications. Most complications which develop during the first four or five months do not usually require hospitalization. Obstetrical problems that occur late in the term can be serious. However, each patient requires individual treatment.

In January 1971 the plaintiff submitted a written reenlistment application to the sergeant in charge of the Marine Corps recruiting office at Burlington, Vermont. After consulting the recruiting headquarters at Albany, New York, the plaintiff was informed at the Burlington office that because she had a dependent child, her application for reenlistment would not be approved.^{3/} No other cause was given for the rejection of the application. This reason advanced by the recruiting sergeant was in accord with a Marine Corps Order (MCO P 1100.61B para. 2209) in effect from September 4, 1970 to June 1, 1972. As applied to the plaintiff, it provided - Women applicants who have a child or children under 18 years of age are unacceptable

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4/

for enlistment or reenlistment.

At the time the plaintiff was released from military service she offered no objection to her discharge. At the trial she testified she wanted to remain in the Marine Corps and would have gone to any duty station where she might be assigned. She wanted her child to remain with her; in the event of assignment where dependents were not allowed, she would arrange for the child's care elsewhere. The plaintiff's daughter remained with her until January 1974. Since that date the child has been in a foster home.

The plaintiff was married on June 10, 1972 to a member of the United States Air Force, with whom she lived for five weeks. She then separated and divorce proceedings were pending at the time of this trial.

In 1970 there were approximately 310,000 Marines on active duty. Of this number, 2,000 were women. The military missions of the Marine Corps require readiness and mobility. To serve these capabilities, all personnel are expected to respond on short notice and without restriction, to orders that might direct expeditious movement from one location to another. The demands of readiness and mobility are made on all personnel.

Each woman in the Marines is assigned a skill. Her duty station is determined by the needs of the service for the particular specialty at various locations where the Marine Corps is located. The only restriction referred to in the evidence, concerning the assignment of women members of the Marine Corps, is that imposed by the provision of 10 U.S.C. § 6015, which forbids their assignment to aircraft engaged in combat missions. Duty on vessels of the Navy is confined to hospital ships and transports. Unscheduled vacancies and replacement transfers in designated skills impose administrative difficulties.

Further, paragraph 10-67 contains the following:
Female enlisted personnel are required to live in barracks, to participate in formations, ceremonial and otherwise. Women Marines are required to attend to daily policing of the barracks at 0600 and report for duty at 0730. There are no nurseries or other facilities at Marine installations for the care of children of Marine personnel.

The Marine Corps maintains no health service of its own; its medical service is provided by Navy officers and corpsmen. At its major bases in continental United States and in overseas stations, where women Marines were assigned, medical facilities are provided. Medical care in a few locations was limited to dispensaries. The dispensary staff would not normally have the capability of providing obstetrical care.

At the time the plaintiff was released from military service, the only temporary physical disability which was cause for mandatory discharge was that of pregnancy. This was revised by way of an official bulletin, issued by the Department of the Navy Headquarters, United States Marine Corps, on March 26, 1971. The bulletin announced that all separation policies in reference to dependency status, parenthood and pregnancy of women officers and enlisted personnel, were being reviewed. Pending such review, it was ordered:

- a. In those instances in which a Woman Marine would normally be separated by reason of pregnancy, she will be advised that she may request retention, and that separation shall not be effected until the woman's request for retention has been considered by the Commandant of the Marine Corps. Requests for retention from reservists not on active duty should be forwarded to the Commandant of the Marine Corps (Code AF). All requests will be processed as expeditiously as possible and should include the woman's personal request for retention, a recommendation by her commanding officer and a medical officer's report. Each case will be considered on an individual basis.
- b. In those cases wherein the officer or enlisted woman desires separation by reason of pregnancy, separation action should be taken in accordance with reference (a).

The review resulted in a regulation which continued the change announced in the preceding bulletin.^{5/}

There are not now, nor have there been during the time of the plaintiff's enlistment, any Marine Corps regulations which disqualify applicants for enlistment, either male or female, from service on the grounds they have engaged in sexual intercourse. There are no regulations which require the discharge of a male Marine because he has impregnated a woman. There is no disqualification for his enlistment or reenlistment for such cause. Marine Corps regulations, relevant in time to this case, contain no provision which subjects a service man to discharge for begetting a child or children in or out of wedlock. Marine Corps regulations on May 27, 1970, as they relate to enlistment and reenlistment of male applicants with one or more dependents, were subject to special conditions of eligibility.^{6/}

CONCLUSIONS

Persons in civilian life, at least, have a right "to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child." Eisenstadt v. Baird, 405 U.S. 438, 453 (1972). Rules and regulations which undertake to penalize a pregnant governmental employee by mandatory termination provisions impose unconstitutional burdens on protected freedoms. Cleveland Board of Education v. LaFleur, 411 U.S. 632, 640 (1974).

The military regulations required the defendant's predecessor to discharge the plaintiff upon the certification that she was pregnant. Because pregnancy is a physical condition unique to women, the plaintiff's challenge of the regulations is based principally on sexual discrimination. Where discrimination is the question, equal protection concepts afford "a more explicit

safeguard of prohibited unfairness" and apply not only to the states, but to the federal government as well by way of the Due Process Clause of the Fifth Amendment. Bolling v. Sharpe, 347 U.S. 497, 499-500 (1954). In the context of this case, the court is called up to search the question presented in the range of equal protection standards.

The Supreme Court, in the majority, has not yet regarded classifications based on sex to be inherently suspect and subject to close judicial scrutiny. See Frontiero v. Richardson, 411 U.S. 677, (1973)(concurring op. Powell, J.); Green v. Waterford Board of Education, 473 F.2d 629, 632 (2d Cir. 1973).

The undivided opinion of the Supreme Court, expressed by Chief Justice Burger in the related context of Reed v. Reed, Administrator, 404 U.S. 71, 76 (1971) is - "A classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.'" Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920).

The facts of this case call upon this court to determine - first, whether the demands of equal protection prevented the Commandant of the Marine Corps from discharging the plaintiff on May 27, 1970 by reason of her pregnancy alone; secondly, whether the defendant could deny reenlistment to the plaintiff in January 1971 because she had a child under eighteen years of age, when there were no similar disqualifications in force as to men. ^{1/} The court's consideration of the challenged Marine Corps regulation is confined to those particular provisions which bear directly on the action taken by the defendant's predecessor which adversely affected the plaintiff.

The medical evidence presented lends support to the

plaintiff's underlying premise that the physical disability which attends a normal pregnancy is temporary. The facts presented here indicate that the plaintiff's pregnancy was not entirely free from complications. In any event, the plaintiff's obstetrician and medical expert related the physical disability from pregnancy to a hard cold, appendicitis and a fractured limb, that could be accommodated by sick leave. His medical comparisons, as with his medical experience and observation, did not relate to the needs of military life. Although the prenatal debilitating effect might be met by sick leave, the consequences of a normal pregnancy, as far as the mother, the child and the military are concerned, do not terminate with birth. Physical, emotional and practical problems will persist.

The Supreme Court recently renewed the long established recognition - "that the military is by necessity a specialized society separate from civilian society. - Indeed, unlike the civilian situation, the Government is often employer, landlord, provisioner and lawgiver, rolled into one. That relationship also reflects the different purposes of the two communities. - While members of the military community enjoy many of the same rights and bear many of the same burdens as do members of the civilian community, within the military community, there is simply not the same autonomy as there is in the larger civilian community." Parker v. Levy, 42 U.S.L.W. 4979, 4982, 4984-4985 (June 19, 1974).

Earlier Justice Clark had written for the Court that - "the rights of men in the armed forces must perforce be conditioned to meet overriding demands of discipline and duty, and the civil courts are not the agencies which must determine the precise balance to be struck in this adjustment." Burns v. Wilson, 346 U.S. 137, 140 (1953). These considerations make pregnancy

in civilian employment situations not comparable to military service.

The Congress has granted to the Secretary of the Navy broad authority to prescribe the manner in which women members of the Regular Marine Corps shall be trained and qualified for military duty and the type of duty to which they shall be assigned, proscribing only combat duty on aircraft and service on naval vessels except hospital ships and transports. 10 U.S.C. § 6015. Under the civilian direction of the Secretary, the Commandant of the Marine Corps is best able to determine how the mission of that particular arm of service can be most competently performed and what personnel are qualified to completely execute its mission. By regulation applicable to the Marine Corps, it was determined that pregnancy rendered a woman member of the Corps unqualified for military service. This decision is a valid military concern, one in which the judiciary, in the interest of orderly government, should not intrude. See Orloff v. Willoughby, 345 U.S. 83, 94 (1953).

The regulation has a rational basis, not solely in terms of a high level of military readiness and mobility, but upon obvious practical considerations as well. A pregnant servicewoman, whether in early or late stages of that condition, could not be expected to respond to an emergency assignment at a distant station without proper attention to her physical well-being and that of her awaited child. After birth, absent adequate nursery and child care facilities, the presence of a child of tender years in a barracks environment would not promote the best interest of either the child or its mother. It would be disruptive to the structured military life to which all members of the command must conform.

Perhaps it can be said that a temporary leave would meet

the demands of the situation during normal pregnancy. The termination of sick leave, after childbirth, might well confront the Commandant with the hard choice of ordering the servicewoman to fulfill her duty assignment at the cost of calling upon her to abandon her maternal responsibilities by surrendering her child to the care and custody of others. The consequences of parenthood on the male Marine are not so disruptive nor severe. The regulation which effected the plaintiff's release from active service was plainly designed to avoid the harsh dilemma that might well attend the retention of a pregnant servicewoman.

Unlike the expectant male parent, the pregnant woman cannot be isolated from the child she has conceived. And as the Court observed in Roe v. Wade, 410 U.S. 113, 159 (1973), - "it is at some point in time, another interest, that of health of the mother or that of potential human life, becomes significantly involved."

According to the evidence, after the birth of her child the plaintiff desired to keep her child and have her remain with her during her enlistment. She asserted this desire at the time of hearing, although the child was then in a foster home. If the defendant should determine that the demands of her assigned duties required her to serve at a station where the child could not be cared for, he could order the separation of the mother from her infant child only at the risk of depriving her of the natural right to the custody, care and nurture of her daughter. See Stanley v. Illinois, 405 U.S. 645, 651 (1972).

To be sure, service in the armed forces often compels such a separation of servicemen who are fathers. The separation of the male parent from his family might be distressful; the forced removal of an infant child from its mother could well

produce a traumatic experience for both.

Unlike Frontiero v. Richardson, *supra*, 411 U.S. at 690, the plaintiff's discharge and the denial of her reenlistment were not based solely on administrative convenience. The retention of a servicewoman during the term of her pregnancy and the needs of a mother with a dependent child could not be accommodated with the structured life which attends performance of full military duty. The plaintiff's medical history established that her service after May 27, 1970 could only be performed at reduced level of physical capability that would overburden the assigned missions of the Marine Corps to constitute a mobile military arm, ready for immediate action within and beyond the continental limits of the United States. The fact that women Marines are not subject to combat duty does not relieve military personnel from the demands of readiness and mobility as a member of a unit assigned to support a combat force. These considerations on the facts presented afford a valid and rational basis for the regulation. Struck v. Secretary of Defense, 460 F.2d 1372 (9th Cir. 1971), cert. granted 409 U.S. 947 (1972), vacated and remanded to consider the issue of mootness, 409 U.S. 1071 (1972).

The regulation did not operate against women as a class; it reached only women who became pregnant. The fact that pregnancy is the controlling factor does not offend the Equal Protection Clause. Geduldig v. Aiello, 42 U.S.L.W. 4911, 4913 (June 17, 1974). The exclusion of male members of the command from the operation of the regulation rests upon a difference that has a fair and substantial relation to the purpose of the regulation. Kahn v. Shevin, 41 U.S.L.W. 4591, 4592 (April 23, 1974).

The plaintiff accuses the regulation of adversely affecting

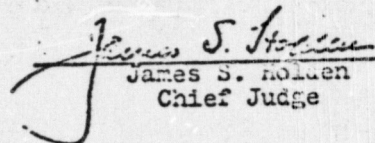
her right to bear and raise children. Her enlistment contract was voluntary and under the prevailing regulations it was conditioned upon her ability to perform assigned military duties consistent with the demands of the military mission of the Marine Corps. This included an undertaking on her part that she would not become subject to the debilitating consequence of pregnancy. There is no proscription against intimacy and marriage. As pointed out in Roe v. Wade, supra, "The pregnant woman cannot be isolated in her privacy. - The woman's privacy is no longer sole and any right of privacy she possesses must be measured accordingly." 410 U.S. at 159. The Court finds no substantial violation of the plaintiff's right to privacy.

The Court agrees with the plaintiff that the revised regulation which permits a pregnant woman member of the Marine Corps to apply for retention to afford individual consideration of the service woman who desires to remain on active duty is more flexible and equitable than the regulation it superseded. See Robinson v. Rand, 340 F.Supp. 37 (D.C. Colo. 1972); Note, Dismissal for Pregnancy in Government Employment, 25 Maine L. Rev., 85-86 (1973). The Equal Protection Clause permits a state to "take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind. - " Williamson v. Lee Optical Co., 348 U.S. 483, 489. The change for a more appropriate rule does not afford an adequate basis for condemning its predecessor as arbitrary and capricious.

The Court holds that the plaintiff's discharge for reason of pregnancy in 1970 and the denial of reenlistment in January 1971, because she had in custody a dependent child under 18 years of age, in keeping with regulations in effect on those dates, were constitutionally valid. The complaint will be dismissed

and judgment entered for the defendant. It is so ordered.

Dated at Brattleboro, in the District of Vermont, this
12th day of July, 1974.


James S. Holden
Chief Judge

FOOTNOTES

1/ The regulation further provided:

Commanders shall discharge for the convenience of the Government (in the case of overseas commands, commanders will transfer for discharge to a major command within the continental United States housing Women Marines):

* * * *

b. A woman member, whether married or unmarried, when it is established that such woman member:

- (1) Is the parent by birth or adoption of a child under 18 years of age; or
- (2) Has personal custody of a child under 18 years of age; or
- (3) Is the stepparent of a child under 18 years of age and the child is within the household of the woman member for a consecutive period of more than 30 days a year; or
- (4) During her current enlistment or extension of enlistment, she has given birth to a living child.

2/ The Elizabeth Lund Home is a facility for the care and treatment of unwed mothers during the period of their confinement.

3/ The plaintiff's handwritten application was returned to her without further action. It was received in evidence. (Pltf. Ex. 5.)

Eligibility guidelines for reenlistment in the Marine Corps specify conduct and proficiency ratings of 4.0 minimum on a zero to 5.0 scale. At the time of her discharge the plaintiff had a conduct average of 3.9; her proficiency rating was 4.2.

4/ From September 4, 1970 to June 1, 1972: MCO P1100.61B, ¶ 2209, read as follows:

Dependents

1. Women applicants with no previous Marine Corps service, active or inactive, who are married, or who are the sole or partial support of minor children or other dependents, shall not be accepted for enlistment in the Regular Marine Corps, or the Marine Corps Reserve.
2. Women applicants who are pregnant or who have ever had an illegitimate pregnancy are unacceptable for enlistment or reenlistment.

3. Women applicants who have a child or children under 18 years of age are unacceptable for enlistment or reenlistment. The term "child or children" means offspring of the woman herself, stepchildren, adopted or foster children. The fact that she has surrendered all rights to custody or control of the child or children through divorce proceedings or through formal adoption does not alter her status of unacceptability for enlistment or reenlistment.
4. Woman applicants who are married or have dependents over 18 years of age, have previous Marine Corps service, active or inactive, may be accepted for enlistment or reenlistment in the Regular Marine Corps provided they are eligible for appointment or reappointment to the grade of corporal or higher in accordance with current instructions. Prior approval must be given by the Commandant of the Marine Corps (Code DP).

5/ The quoted regulation was later modified, June 28, 1972, by MCO P1900, 16A & 1612, presently in effect:

Discharge or Release from Active Duty for Convenience of the Government

1. The Secretary of the Navy, or the Commandant of the Marine Corps, may authorize or direct the discharge or release from active duty of a Marine for the convenience of the Government for any one of the following reasons:

* * * *

- c. Pregnancy and adoption (see paragraph 6012.3b and c, below, for specific details and waiver provisions).

* * * *

Commanders shall discharge for the convenience of the Government (in the case of overseas commands, commanders will transfer for discharge to a major command within the continental United States housing Women Marines):

* * * *

- b. A woman Marine, whether married or unmarried, when it is established such woman:
 - (1) Is pregnant; (see figure 5-2, Eligibility for Maternity care). If as a result of a spontaneous or therapeutic abortion, or a stillbirth, the woman Marine's pregnancy is terminated prior to her separation from the service, she will nevertheless be discharged for the convenience of the Government unless she requests, in writing, that she be retained in the service. In such latter case, the woman Marine, at the discretion of her

commander, may be retained in the service, if she is found physically qualified for retention. The character of the discharge certificate issued in these cases will be as warranted by the woman Marine's service record regardless of her marital status. In the case of discharge for reason of pregnancy of a woman who is an unmarried minor (under 21 years), her commander will notify her parents or guardian of the fact and reason for discharge.

- (2) Is the parent by birth of a child under 18 years of age; or
- (3) During her current term of service, she has given birth to a living child.

c. A woman Marine when it is established that such woman:

- (1) Is the parent by adoption of a child under the age of 18 years; or
- (2) Has personal custody of a child under the age of 18 years; or
- (3) Is the stepparent of a child under the age of 18 years who is within the household of the woman for a consecutive period of more than 30 days a year.

d. Waivers of the provisions of subparagraph 6012.3b, c above may be requested from the Commandant of the Marine Corps (Code DM) in those cases where the Woman Marine is a parent, stepparent, has personal custody of, or adopts a child. Each request will be considered on its own merits, taking into consideration such factors as length of service of the requestor, ages and number of children involved, record of individual and the Commanding Officer's evaluation of the situation. Any waiver so granted will be effective only so long as parenthood, stepparenthood or custody does not conflict with normal career assignment.

6/ The Marine Corps rules and regulations governing the eligibility of male applicants for enlistment and reenlistment into the Marine Corps, MCO P1100.61B para. 2109, in effect at the time the plaintiff applied for reenlistment provided:

- 1. Male applicants with only one dependent are acceptable for enlistment in the Marine Corps or Marine Corps Reserve, Category "J", if otherwise qualified, and such enlistment will not in the opinion of the recruiting officer impose unusual financial hardship on the individuals concerned. Prior to effecting such enlistment,

both husband and wife will certify that they understand the following:

- (a) Limitations on dependents travel reimbursement.
- (b) Limitations on shipment of household effects.
- (c) Limitations as to eligibility for dependent housing.
- (d) The probability of applicants assignment overseas unaccompanied by dependent.

2. Individuals with more than 1 dependent, other than those classified 1A by Selective Service and not eligible for reappointment to the grade of corporal or above, will not be enlisted without authority from the Commandant of the Marine Corps (Code DP). Requests for waiver will only be submitted in cases where entry pay and allowances would not impose a hardship on his dependents or himself. Waiver requests will be submitted as per paragraph 2113.

3. Individuals who have dependents will have the originals or certified copies of the following documents in their possession at the time of departure for recruit training:

- (a) Marriage certificate.
- (b) Divorce decrees.
- (c) Birth certificates of all children.

7/ The plaintiff places reliance on recent regulation promulgated under Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000E-2) to the effect that a pregnant employee must be accorded the same treatment as that afforded other employees who are temporarily disabled. (29 C.F.R. § 1604-10 (1972).) It is noteworthy that the Equal Employment Opportunity Act of 1972 excludes the armed services from its operation.



MCO P1900.16 Ch 2
DM-cb
21 Nov 1969

MARINE CORPS ORDER P1900.16 Ch 2

From: Commandant of the Marine Corps
To: Distribution List

Subj: Marine Corps Separation and Retirement Manual (Short
Title: MARCORSEPMAN)

Encl: (1) New page inserts to MCO P1900.16
(2) List of effective pages

1. Purpose. To transmit new page inserts to the subject Manual.

2. Cancellation. MCBul 1800 of 12 June 1969.

3. Summary of Changes

a. Changes in chapter 10 include minor but important procedural changes in the administration of disability separations.

(1) New paragraph 10406 authorizes the Commanding General, Marine Corps Base, Quantico, Virginia to discharge certain members of officer training programs found not physically qualified for retention and establishes the necessary administrative instructions thereto.

(2) New paragraph 10407 authorizes the Commanding General, Fourth Marine Aircraft Wing, directors of Marine Corps districts, and the Commanding Officer, Marine Corps Reserve Forces (Class III) to discharge certain reservists on inactive duty found not physically qualified for retention in the Marine Corps Reserve and establishes the necessary administrative instructions thereto.

CMC CENTRAL FILES
ADMINISTRATIVE DIVISION

MCO P1900.16 Ch 2
21 Nov 1969

Further, paragraph 10407 contains authorization for certain reservists not on active duty to appear before physical evaluation boards at Government expense.

b. There are significant changes to chapter 11 contained in this Change relative to administrative processing of the DD form 214.

4. Action

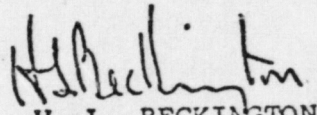
a. Insert enclosure (1)

b. Upon insertion of this Change, the pages listed in enclosure (2) are in effect. Remove and destroy pages not listed.

5. Change Notation. Significant changes contained in this Change are denoted by an arrow (\rightarrow) symbol.

6. Filing Instructions. This Change will be filed immediately following page 3 of the basic Manual.

7. Certification. Reviewed and approved this date.


H. L. BECKINGTON
By direction

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7 JAN 1970 31136
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MARINE CORPS
SEPARATION AND RETIREMENT MANUAL

6012 DISCHARGE OR RELEASE FROM ACTIVE DUTY FOR CONVENIENCE OF THE GOVERNMENT

1. The Secretary of the Navy, or the Commandant of the Marine Corps, may authorize or direct the discharge or release from active duty of a Marine for the convenience of the Government for any one of the following reasons:

a. General demobilization, reduction in authorized strength of the Marine Corps or Marine Corps Reserve, or by an order applicable to all members of a class of personnel specified in the order.

b. To accept a commission or appointment in the Marine Corps, Marine Corps Reserve, or in another branch of the Armed Forces, for active duty only.

c. A woman member, whether married or unmarried, upon certification by a medical officer that she is pregnant, shall be discharged by her commander, for the convenience of the Government, or in the case of overseas commands, will be transferred to a major Marine Corps command housing Women Marines in the continental United States for discharge. The character of the discharge certificate issued in these cases will be as warranted by the woman member's service record, regardless of her marital status. In the case of discharge for reason of the pregnancy of a woman member who is an unmarried minor (under 21 years), her commander will notify her parents or guardian of the fact and reason for the discharge. If, as a result of a spontaneous or therapeutic abortion, or a stillbirth, the woman member's pregnancy is terminated prior to her separation from the service, she will nevertheless be discharged for the convenience of the Government unless she requests, in writing, that she be retained in the service. In such latter case, the woman member, at the discretion of her commander, may be retained in the service, if she is found physically qualified for retention.

d. For reasons of national health, safety, or interest, only when recommended by a Government agency authorized to make such determination and recommendation. Cases of this nature will not normally come to the attention of individual commanders, however, when they do, a prompt report thereof, containing all available information, shall be made to the Commandant of the Marine Corps (Code DM).

e. By reason of erroneous induction (when so stated by the office of the Director of Selective Service), or by erroneous enlistment or extension of enlistment. Any case coming to a commander's attention which purports to be of this nature shall be investigated, and a complete report shall be made promptly to the Commandant of the Marine Corps (Code DM).

f. For other good and sufficient reasons, not elsewhere listed in this chapter which are specified and published by the Secretary of the Navy. Those currently specified are as follows:

(1) For the purpose of holding public office, as set forth in subparagraph 2001.9.

(2) Obesity, provided a medical board certifies that the proximate cause of the obesity is the excessive voluntary intake of food and/or drink, rather than from organic or other similar causes apparently beyond the control of the member (see current edition of BUMED INST 1910.2 and MCO 6100.3).

6-23
Ch 2



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
WASHINGTON, D. C. 20380

MCO P1100.61B
DPJ-er
1 Sep 1970

MARINE CORPS ORDER P1100.61B

From: Commandant of the Marine Corps
To: Distribution List

Subj: Military Personnel Procurement Manual (Short Title: MPPM)

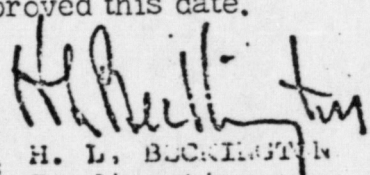
Ref: (a) MCO P5000.3 MARCORDERSMAN

Encl: (1) LOCATOR SHEET

Reports Required: List, page v

1. Purpose. To promulgate policies and procedures for the guidance of personnel assigned to duties involving the procurement of Marine Corps officer and enlisted personnel; to establish the qualifications and standards for military personnel procurement programs; and to establish procedures governing the processing of applicants for these programs.
2. Cancellation. MCO P1100.61A; reference (a), paragraphs 2000 through 2154, 15052, 15054, 15058, 15061 through 15063, and 15077 through 15080.
3. Recommendations. Recommendations concerning the contents of the Military Personnel Procurement Manual are invited. Such recommendations should be forwarded to the Commandant of the Marine Corps (Code DP), via the appropriate chain of command.
4. Reserve Applicability. This Manual is applicable to the Marine Corps Reserve.
5. Certification. Reviewed and approved this date.

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H. L. BECKINGTON
By direction

CMC CENTRAL FILES
ADMINISTRATIVE DIVISION

the person actually destroying the material and certified by a person witnessing such destruction. The report will be retained until 2 years after the test ceases to be effective.

2208 TERM OF ENLISTMENT

1. Women applicants with no prior service in any branch of the Armed Forces may be enlisted in the Regular Marine Corps for 3 or 4 years.
2. Women applicants with no prior active service may be enlisted in the Marine Corps Reserve for 3 or 4 years and request assignment to extended active duty for 2, 3, or 4 years. Two-year EAD assignments will be held to a minimum consistent with achieving quotas.

Sept. 4, '70 to 2209 DEPENDENTS

uncl, '72
Ans. 1(a)

1. Women applicants with no previous Marine Corps service, active or inactive, who are married, or who are the sole or partial support of minor children or other dependents, shall not be accepted for enlistment in the Regular Marine Corps, or the Marine Corps Reserve.
2. Women applicants who are pregnant or who have ever had an illegitimate pregnancy are unacceptable for enlistment or reenlistment.
3. Women applicants who have a child or children under 18 years of age are unacceptable for enlistment or reenlistment. The term "child or children" means offspring of the woman herself, stepchildren, adopted or foster children. The fact that she has surrendered all rights to custody or control of the child or children through divorce proceedings or through formal adoption does not alter her status of unacceptability for enlistment or reenlistment.
4. Women applicants who are married or have dependents over 18 years of age, have previous Marine Corps service, active or inactive, may be accepted for enlistment or reenlistment in the Regular Marine Corps provided they are eligible for appointment or reappointment to the grade of corporal or higher in accordance with current instructions. Prior approval must be given by the Commandant of the Marine Corps (Code DP).

2210 CIVIL RECORD

1. The provisions of subparagraph 2111.1 apply to women applicants and verification of their civil, including juvenile, records. Women applicants who have juvenile or youthful offender records or who have been convicted by a criminal court of any offense, except minor traffic violations, are not eligible for enlistment or reenlistment in the Marine Corps. No waivers will be granted.

2-63



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
WASHINGTON, D. C. 20380

MCBul 1900
AOIC-sps-47
26 Mar 1971

MARINE CORPS BULLETIN 1900

From: Commandant of the Marine Corps
To: Distribution List

Subj: Separation of Officer and Enlisted Women by Reason
of Pregnancy

Ref: (a) MCO P1900.16

1. Purpose. To publish information concerning separation of women officer and enlisted personnel by reason of pregnancy.

2. Information. All separation policies contained in reference (a) relating to dependency status, parenthood and pregnancy of women officer and enlisted personnel are currently being reviewed.

3. Action

a. In those instances in which a Woman Marine would normally be separated by reason of pregnancy, she will be advised that she may request retention, and that separation shall not be effected until the woman's request for retention has been considered by the Commandant of the Marine Corps. Requests for retention from Regular personnel and reservists on active duty should be forwarded to the Commandant of the Marine Corps (Code DM). Requests for retention from reservists not on active duty should be forwarded to the Commandant of the Marine Corps (Code AF). All requests will be processed as expeditiously as possible and should include the woman's personal request for retention, a recommendation by her commanding officer and a medical officer's report. Each case will be considered on an individual basis.

b. In those cases wherein the officer or enlisted woman desires separation by reason of pregnancy, separation action should be taken in accordance with reference (a).

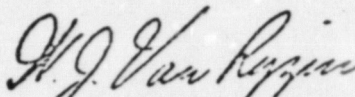
PCN 102 025850 00

MCBul 1900

26 Mar 1971

4. Reserve Applicability. This Bulletin is applicable to the Marine Corps Reserve.

5. Self-Cancellation. 31 August 1971.



W. J. VAN RYZIN
Chief of Staff

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DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
WASHINGTON, D. C. 20380

COPY
#5

MCO P1900.16A
DM-caw
28 Jun 1972

MARINE CORPS ORDER P1900.16A

From: Commandant of the Marine Corps
To: Distribution List

Subj: Marine Corps Separation and Retirement Manual
(Short Title: MARCORSEPMAN)

Encl: (1) LOCATOR SHEET

1. Purpose. To update regulations and policies on separations and retirements.
2. Cancellation. MCO P1900.16.
3. Reserve Applicability. This Manual is applicable to the Marine Corps Reserve.
4. Certification. Reviewed and approved this date.

F. C. LaHue
F. C. LAHUE
Chief of Staff

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Designation is canceled upon
removal of pages 11-8 through 11-14.

PCN 102 027300 00
Ch 2

g. Any recruit who concealed preservice involvement in sale or distribution of illicit drugs shall be discharged for the convenience of the government unless there is sufficient basis for processing for separation by reason of misconduct for fraudulent enlistment.

h. A recruit who concealed preservice drug use by answering "No" to Item Number 23, NAVMC 136-PD (REV 4-69) and who is considered unfit for retention shall be processed for separation by reason of misconduct for fraudulent enlistment. See subparagraph 6018.2b(7).

3. Commanders shall discharge for the convenience of the Government (in the case of overseas commands, commanders will transfer for discharge to a major command within the continental United States housing Women Marines):

a. A married enlisted woman at her written request provided she is not stationed at or sufficiently close to the duty station or residence of her husband to permit the maintenance of a joint residence and provided she meets all applicable conditions set forth below:

(1) A transfer request to the same or nearby duty station or place of residence of her husband has been submitted by the enlisted woman to the Commandant of the Marine Corps (Code DF) and the request has been denied.

(2) The separation of husband and wife has exceeded 18 months.

(3) The enlisted woman is not serving on an extension of enlistment or reenlistment entered into subsequent to marriage.

(4) The enlisted woman has completed 24 months' service following completion of a service school if length of course was over 24 weeks.

b. A woman Marine, whether married or unmarried, when it is established that such woman:

(1) Is pregnant; (see figure 5-2, Eligibility for Maternity Care). If as a result of a spontaneous or therapeutic abortion, or a stillbirth, the woman Marine's pregnancy is terminated prior to her separation from the service, she will nevertheless be discharged for the convenience of the government unless she requests, in writing, that she be retained in the service. In such latter case, the woman Marine, at the discretion of her commander, may be retained in the service, if she is found physically qualified for retention. The character of the discharge certificate issued in these cases will be as warranted by the woman Marine's service record regardless of her marital status. In the case of discharge for reason of pregnancy of a woman who is an unmarried minor (under 21 years), her commander will notify her parents or guardian of the fact and reason for discharge.

(2) Is the parent by birth of a child under 18 years of age; or

(3) During her current term of service, she has given birth to a living child.

c. A woman Marine when it is established that such woman:

(1) Is the parent by adoption of a child under the age of 18 years; or

(2) Has personal custody of a child under the age of 18 years; or

(3) Is the stepparent of a child under the age of 18 years who is within the household of the woman for a consecutive period of more than 30 days a year.

Pregnancy Force-Outs End

WASHINGTON — Women have won another right but the victory may prove costly to some.

From now on, pregnant officers and enlisted members can stay in service unless they specifically request voluntary separation. Until now, pregnant women were processed for involuntary separation unless they received waivers to stay in.

The change means that female officers who are separated for pregnancy no longer will be eligible for readjustment pay. It is payable only on involuntary separation. EM do not get severance pay regardless of the conditions of separation.

The new voluntary separation policy was circulated in "immediate action changes" to AFR 36-12 (for officers) and AFM 39-10 (for EM). The changes were passed to base personnel offices by letter from the Military Per-

Women Will Have to Ask for Release; Officers Lose Severance Pay

sonnel Center March 19.

At one time, AF automatically separated women when it learned they were pregnant. Some years ago, the rules were changed to allow women to request waivers to remain in service.

About one year ago, the Supreme Court ruled, in a case involving school teachers, that women could not be forced to quit work at an arbitrary point during pregnancy. At the time, AF said it did not see any application of the ruling to its policy.

Now, however, the emphasis of AF policy has shifted from separating pregnant women unless

they obtain waivers to letting them stay unless they request separation.

The change may not be good news to all female officers, however. For the last four years, AF has considered separation for pregnancy involuntary and service pay regulations have provided readjustment pay in such cases. The severance can amount to as much as \$15,000, depending on the officer's grade and service.

Now, with pregnancy no longer a cause for involuntary separation, officials say the readjustment money will not be payable.

There is no similar severance pay for enlisted but provision for it is included in the new Defense retirement pay proposal. That proposal also would allow some separation payments for officers and EM who separate voluntarily. Presumably pregnant women could qualify for some cash under this provision but payments for voluntary separation would be smaller than those for involuntary exit.

Under the new change to AFR 36-12, female Regular officers can tender their resignations and, if desired, request Reserve appointments. Reserve officers can ask for release from active

duty or tender their resignations. Requested separation dates must be at least 60 days before the "expected date of confinement."

Enlisted women can request separation for pregnancy under new paragraph 3-13 of AFM 39-10.

Both officers and airmen can wear civilian clothes when they become appropriate and will be allowed maternity care in military medical facilities (but not under Champus) even after they have left service.

The EM manual has an additional provision barring pregnant women from enlisting. If AF discovers that a woman has enlisted when pregnant, she will be discharged involuntarily (for "erroneous enlistment") and she will not be entitled to military maternity care after discharge.

